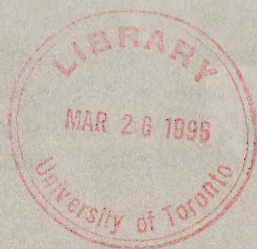


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The New Child Support Package

March 1996

Canada



Why is the government introducing new rules for child support?


Above all, the new child support rules are about the rights of children.

Children have the right to be financially supported by both parents after separation or divorce. Too often, however, our current child support provisions fail in this objective – producing awards that are varied and unpredictable, sometimes inadequate, and often unpaid.

Recognizing the need for fundamental change, the federal government is taking action in four key areas. These measures, proposed in the recent federal budget, will take effect after the passage of the necessary legislation.

What are the “four key areas” of change?

- First, child support paid under orders or agreements that are made or varied after April 30, 1997 will no longer be taxed as income to the recipient, or deducted from income by the paying parent.
- Second, Federal Child Support Guidelines will be introduced to establish fair and consistent child support awards in divorce cases.
- Third, a wide range of measures will be introduced to help enforcement agencies combat the chronic problem of default on support payments.



■ Fourth, there will be a two-stage doubling of the Working Income Supplement of the Federal Child Tax Benefit.

Again, the fundamental objective of these measures is to protect the rights of children to fair and adequate support from parents – paid in full and on time.

What are the new rules for the taxation of child support?

Simply put, we are moving to a system of “no deduction, no inclusion”.

The *Income Tax Act* currently requires parents receiving child support to include the support payments in their taxable income, and provides a tax deduction to child support payers for the payments they make. The Task Group on the Taxation of Child Support and the Federal/Provincial/Territorial Family Law Committee have found that these rules make it harder to set fair and realistic child support awards.

In keeping with the recommendations of these groups, new child support awards will no longer be taxed as income to the recipient or be deductible by the payer.

Do the new tax rules affect existing support orders?

The new tax rules do not apply to orders made before May 1, 1997 unless:



- a) a court order or agreement made on or after May 1, 1997 changes the amount of child support payable under an existing agreement or court order;
- b) the court order or agreement specifically provides that the new tax rules will apply to payments made after a specified date (which cannot be earlier than April 30, 1997); or
- c) the payer and the recipient both sign and file a form with Revenue Canada stating that the new tax rules will apply to payments made after a specified date (which cannot be earlier than April 30, 1997). For this purpose, Revenue Canada will provide a form which will be available later this year at all tax services offices.

The new tax rules will apply to all new orders or agreements made on or after May 1, 1997.

Why do we need the new Child Support Guidelines?

Reforming the tax rules for support payments is just part of what is needed for a better child support system. It is also essential that the awards themselves be set at levels which are appropriate – and which take the new tax rules into account.

This is why the government is introducing new Child Support Guidelines to the *Divorce Act* – guidelines that provide fair and consistent support awards, with enough flexibility to deal equitably with special situations. They will assure that the child's standard of living continues to reflect the means of both parents.



How will the Guidelines work?

The Guidelines will work in tandem with the new tax rules to ensure that children receive the support they deserve. Together, they will make the determination of support simpler, faster and less expensive for separating parents.

The new Guidelines have three main parts:


- i) Child support payment schedules which set out the basic amount of support**

The child support payment schedules set out the basic amount of support that a support-paying parent should pay according to his or her income and the number of children. The amount, calculated as a percentage of the support-paying parent's income, is based on average spending on children at different income levels, adjusted for the impact of federal and provincial income taxes.

Once the Guidelines are in force, courts will be required to award the amount set out in the schedules in most cases. In special situations, the award can be adjusted, as noted below.

- ii) Rules for increasing schedule amounts if there are special expenses**

The amounts set out in the schedules are based on average expenditures. However, the award can be increased if there are special expenses for child care, health care, education, or special extracurricular activities – provided that the court finds that these expenses are reasonable and necessary given the needs of the children and the means of the parents.



iii) Rules for adjusting awards if there is “undue hardship”

As a further means of ensuring flexibility and fairness, the award can be increased or decreased if there would otherwise be “undue hardship” to either parent or to the child. For instance, the support-paying parent may have significant access costs, or support other children.

What about cases of split or shared custody?

The Guidelines provide a method to adjust the amount of support in cases of split or shared custody.

How will the new Guidelines apply to existing child support orders?

The new Guidelines will apply to court orders for child support made under the *Divorce Act* and when an existing order for child support is changed after the date the Guidelines come into force.

This means that the new Guidelines – like the new tax rules – will not automatically affect the operation of existing child support orders. If neither parent seeks a change to an existing support order, then the order continues in force, unaffected by either the Guidelines or the tax change. However, either parent will be able to apply to court to have their child support award varied to reflect the Guidelines and the new tax rules.



Will the Guidelines apply to awards negotiated out-of-court?

The Guidelines will not be mandatory in the case of support awards that are negotiated out-of-court. However, they will provide significant guidance to the parties and their advisors.

What do you mean by “more effective enforcement” of child support orders?

Children will only benefit from fairer child support awards if they are paid in full and on time. While enforcement is primarily a provincial responsibility, the federal government supports enforcement with funding, assistance in tracing defaulters, and garnishment of federal payments.

The federal government will strengthen enforcement procedures through measures that include:

- suspension of certain federal licences, such as passports, in cases of persistent default;
- the addition of Revenue Canada to the list of federal departments whose data banks may be searched, at the request of provincial enforcement agencies, to locate defaulters;
- measures expanding access to pension benefits to satisfy support obligations.



Is the government doing anything to promote public awareness of the problem posed by chronic default?

Yes, the federal government will fund a national awareness campaign to help combat chronic default and the unacceptable attitude that child support can be treated as a bargaining chip between former spouses in conflict.

Is it true that the Working Income Supplement will be increased?

Yes, over the next two years, the federal government will double the Working Income Supplement (WIS) of the Child Tax Benefit – from the current maximum of \$500 per family to \$750 in July 1997 and \$1,000 in July 1998.

Where can I get further information?

Contact: 1-800-343-8282 (English & French)
1-800-465-7735 (TDD)